PRESERVED

G. R. S. App. F. IX-4]

194

File No. 2-41

Previous References.

(Legis

Serial Nos. 1

Later References.

Legis 7-43-1

59

GENERAL AND REVENUE SECRETARIAT

Serial Nos.

Part B for July 1941

SUBJECT.

Protection to Military forces from Litigation during the war

An Act to apply the Indian Soldiers Litigation Act 1941 to Mysore

To the compiler Mysore Gazette

No RL 275 Legis 5-41-1 dated 30-7-41

Orders the publication of the Act in the Ga

W
11.8.41

1940 702

Protection to Military forces from litigation during the War

and Revenue Secretariat | File No. 9 Mis 4 of 194 | [App. F. III-2

Serial No.

From the Secy. to the Resident
Letter no. F 78-40/41 d. 19.8.40.
Suggests for reasons given to amend the Mysore Soldiers Litigation Act to give protection to the Military forces from litigation during the War

(1) There appears to be no separate Litigation Act for soldiers in the State. Before consulting the Law Secty in the matter, a copy of the Residency letter will be sent, if agreed, to the C.C.M.S.T. for his remarks. Subs with a draft letter to the C.C.; for approval

HK. 22/8 Hy 22/8

(2) For perusal before issue

Law General Rep 22/8

(3) Issue & send the file to Law Section for favour of a note -

GENERAL SECRETARY. 23 AUG. 1940 1230

ISSUE & SUBMIT

TYPING SECTION 23 AUG. 1940

2 To the C.C.M.S.T

G 1744 dated 27.8.1940 forwarding for opinion a copy of Residency letter (Sl.1) in regard to the protection of Military forces from litigation during the War

4) Papers for favour of a note (Refer para 3) Law Section

Hy 28/8 28/8/40

Legislative Sec) Please see my note 3 28/8

5) In May 1915, an Ordinance was made and promulgated in British India for the special protection of Indian soldiers serving under war condition. This was replaced by an Act passed in the same year.

NOTE—Contn. Sheet.

1368
P

File No. of 194 . | General and Re Secretaria

Serial No.

6. The Ordinance was applied to Mysore by Act V. of 1915 and the Act was reenacted by Act VI of 1915 which replaced the earlier enactment. Under section 1, "The Indian Soldiers (litigation) Act XII of 1915 shall, mutatis mutandis be enforced in Mysore."

7 This Act VI of 1915 has not been repealed by any subsequent enactment of ours. Even though the British Indian Act was repealed by a later Act of 1918 and the present law is to be found in the Act of 1925, as still Act VI of 1915 is an enactment passed in Mysore, it will continue to be in force until repealed by an Act of Mysore.

8 The protection afforded by the 1915 Act is in respect of Civil and Revenue litigation of Indian Soldiers serving under war conditions. The 1925 Act of British India extends such protection to soldiers even while serving on garrison duty overseas and in certain areas in India. A new definition of "special conditions" is included in the later Act. Generally also the scheme of the enactment has been slightly changed.

9 The Residency in their letter suggest modifications of our Act for two purposes. Firstly to extend the protection as in the later British Indian Act. Secondly to make our Act applicable to soldiers belonging to the Indian Army or Indian Air Force. In British India, under section 18 of the Defence of India Act, the British Indian Act applies to Indian State Forces when they operate in British India.

10 Whether these suggestions are acceptable is for the administration section to decide.

20/9/

1368 pols

QM 702

Serial No.

11. We better that our Act be amended, so as to bring it in line with the British Indian Act. The file may be sent back with the aforesaid note.

Law Secretary) 3 23/9/40

2217 23/9 GENERAL SECRETARIAT 24 SEP 1940 1880

General Secy) Hm 2 23/9/40 3 23/9/40 Dr 24/9

From the C.C.M.S.T. Letter No. 191-PC-C364/40 d. 6.9.40 State that similar rules be made to protect the State Soldiers of the Mysore State Troops from litigation during the war.

12. The Indian Soldiers (Litigation) Act (XII of 1915 has been imitatis mutandis applied to Mysore by Regulation No. VI of 1915. Under Section 2 of the Regulation the Br. Indian Act has been made applicable to all the members of the Mysore Military forces on active Service.

13. Under the Act of 1915, protection is afforded to a soldier in respect of Civil and Revenue litigation, only when he is serving under war conditions either in India or out of India during the continuance of the (last) war & for six months thereafter and after the expiration of such period serving in any

D

Secn 2 D

NOTE—Contn. Sheet.

Serial No.

place when such service has been declared to be service under war conditions. This Regn of 1915 is considered to be still in force in Mysore as it has not been repealed or replaced by any subsequent Act, whereas the Br. Indian Act of 1915 has been repealed and Act IV of 1925 is now in force in British India.

14 The Br. Indian Act of 1925 has extended the scope of the earlier Act in regard to "war conditions" and gives protection to soldiers serving under "Special conditions" as defined in section (3) of the Act. The scheme of the enactment has been also slightly changed.

15. The Resident & State treat with a view to protect in the State the interests of soldiers whether belonging to the Indian States forces or to the Indian Army or Indian Air force who are unable on account of the war to look after their own affairs - soldiers not only in active service but also those performing ordinary duties in India. The Mysore Soldiers' Litigation Act (the Regulation VI of 1915) may be amended in order that it may confer the benefits accruing in respect of legal proceedings in British Indian Courts from the Indian Soldiers

Serial No.

(Liligation) Act 1925 or from that Act read with Secn 18 of the Defence of India Act. The Residency State further that it is considered that the expansion of the Scope of the "war contributions" and the inclusion of the "Special contributions (defined in secn 3 of the Act of 1925) are primarily necessary.

16. The Chief Comandant also States that similar rules (as in Br. India) be made to protect the State Soldiers of the Mysore State Troops from liligation during the war.

17. Under Secn 18 of the Defence of India Act 1939, which has been made applicable to Mysore by Act no. XXVI of 1939, every provision of law for the time being in force, which gives protection, whether specifically or otherwise to members of His Majesty's military forces or of the police forces in Br. India from any prosecution or other legal proceedings or from any other liability, shall apply also to members of the military or police force respectively of any Indian State while attached to, Operating with or assisting any of His Majesty's military forces or any police force in Br. India.

18. Therefore, the protection required in respect of the Indian Soldiers & the members of the Mysore State Troops, is in regard to the civil & revenue liligation within the State. This protection can be afforded by applying

NOTE—Contn. Sheet.

702 F. 1062 — 1356 Litigation

Draft Bill to apply the provisions of the Indian Soldiers' Act to Mysore

File No. Mily of 194 | General and Revenue Secretariat

Serial No.

Mulakis Mulandris the provisions of the British Indian Soldiers Litigation Act of 1925 to Mysore & by repealing the Indian Soldiers Litigation Regulation No. VI of 1915. As this Regulation of 1915 was enacted with a view to enforce the provisions of the Indian Soldiers Act of 1915 in Mysore, there may be no objection to repeal it and to apply the provisions of the Act of 1925 to Mysore by an enactment of ours. If approved a draft bill applying the Br. Indian Act of 1925 will be prepared. A draft is however proposed for approval or other orders Submd

'E' GENERAL SECRETARY 26 OCT. 1940 2679

25/10/40 by 10

General Dey 25/10

SECY. LAW DEPT 28 Oct 1940

19 for favour of remarks as to whether the draft bill proposed is suitable & may be adopted.

Dinr 4 with compts

28/10

Hm 2 29/10/40 Mer 29/10

Draft Bill to apply the provisions of the Indian Soldiers Litigation Act to Mysore

General and Revenue Secretariat | File No. Mily of 194 . | [App. F. III-2

Serial No.

20 The draft Bill proposed gives protection in Mysore in respect of litigation only to members of the Mysore State Troops.

21 The Residency have requested that such protection may be extended to soldiers belonging to the Indian Army and the Indian Air Force also. In British India, under section 18 of the Defence of India Act, protection available to Indian Soldiers is also made available to members of the military or police forces of any Indian State, while attached to, operating with or assisting any of His Majesty's military forces or any police force in British India.

22 In these circumstances and considering that the protection is only a postponment of proceedings and does not affect substantive rights, the draft Bill may perhaps make provision for giving protection to soldiers belongin to the Indian Army and Air Force also.

23 A revised draft Bill is put up. A Statement of General Principles is also put up. If approved, this Bill will be placed before the ensuing session of the R.A. and thereafter the L.C.

Submitted for orders.

24.4.41

BKR 24.4.41

Law Secy

24 May be approved.

Gen Secy M.C.)

Hon 2 24/4/41

GENERAL SECRETARY 24 APR. 1941 2890

25 The draft Bill may be approd. The matter does not come within the exceptions (i.e., subjects excluded, which are not to be placed

NOTE—Contn. Sheet.

Mysore Act 1940.

1042

Draft Bill to apply the provisions of the Indian Soldiers Litigation Act to Mysore.

File No. 7116 of 194 .

General and Revenue Secretariat

Serial No.

DEWAN'S OFFICE
4. MAY 1941
NO. 2534

GENERAL SECRETARIAT
1 MAY 1941
3069

before the Legislature. The suggestion at para 23 may therefore be accepted. After orders are passed the file will be sent to the Legislature Secn again for taking necessary further action in the matter. Subs to orders.

26/4 (General Secy) 30/4

26/4 The Indian Soldiers Litigation Bill relating to the Act of 1915 passed by the State for enforcing the provisions of the Indian Soldiers Act XII of 1915 in Mysore referred to at the first para of the draft Statement of general principles was placed before the Mysore Legislative Council, before it was passed into an Act. The connected Legislative collection No. 17-15 (1-4) is placed below as instructed.

3/5

27) may be appd. The Draft will my be placed before the next R. A & L. C sessions — Cancelled. May be dispensed & by circulation

(Dewan) 3/5

3/5/41

28) Me 4-5-41

Circulation 4/5

(Secy to Legislative Secretary) 5/5

CB Circulation MK 6/5

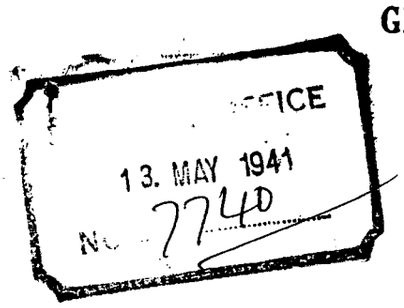
1042

For Disposal by Circulation. **No. C. 616 of 1940-**

.....193....

GENERAL AND REVENUE SECRETARIAT.

Council Matter.



Subject

A Bill to apply to Mysore the Provisions of the Indian Soldiers (Litigation) Act 1925.

Circulated to the Members of Council.

By Order,

Misamfal

.....6th....May.....194 1. *Chief Secretary to Government.*

11437 7/5/41 **First Member of Council.** 9/5/41

11379 9.5.41 **Second Member of Council.** 9.5.41

Gen. Secy. with compliments.

9.5.41

W.S.R. is filled up.

12/5

12/5

12/5

9/5

Submitted to His Highness.

The Residency have requested the Mysore Government to consider what steps should be taken with a view to protecting in the State the interests of soldiers whether belonging to the Indian State Forces or to the Indian Army or Indian Air Force who are unable on account of the war to look after their own affairs. They have pointed out that not only soldiers on active service are unable to attend courts, but also, in many cases, those performing ordinary duties in India, since it is inconvenient at present to permit them to leave their units. The Residency have suggested the amendment of the Mysore Soldiers (Litigation) Act in order that it may confer the benefits accruing in respect of legal proceedings in British Indian Courts from the Indian Soldiers (Litigation) Act, 1925, or from that Act read with Section 18 of the Defence of India Act.

The Indian Soldiers (Litigation) Act XII of 1915 was mutatis mutandis applied to Mysore by Act No. VI of 1915. Under Section 2 of the Mysore Act, the Indian Soldiers Act has been made applicable to all the members of the Mysore Military Forces on active service. This Act of 1915 has not been repealed by any subsequent enactment in Mysore while the British Indian Act was repealed by a later Act of 1918, and which in turn has been repealed by another Act of 1925, which is now in force.

The protection afforded by the Act of 1915 is in respect of Civil and Revenue litigation of Indian Soldiers serving under war conditions. The 1925 Act of British India extends such protection to soldiers even while serving on garrison duty overseas and in certain areas in India and gives a new definition of "special conditions" as found in Section 3 of the Act. The scheme of the enactment has been also slightly changed.

The Residency suggest modifications of the Mysore Act of 1915 for two purposes - first, to extend the protection as in the British Indian Act of 1925, and secondly, to make the Mysore Act applicable to the soldiers belonging to the Indian State Forces, the Indian Army or the Indian Air Force. In British India, under Section 18 of the Defence of India Act, the British Indian Act applies to Indian States Forces when

they operate in British India. The Chief Commandant who was consulted in the matter states that similar rules be made to protect the State soldiers of the Mysore State Troops from litigation during the war.

As the protection required in respect of the Indian Soldiers and the members of the Mysore State Troops is in regard to the postponement of proceedings in Civil and Revenue litigation within the State during the war and does not affect substantive rights, it is proposed to apply the provisions of the Indian Soldiers (Litigation) Act, 1925, to Mysore and repeal the Mysore Act of 1915. A draft Bill has accordingly been prepared and it will be placed before the Representative Assembly and Legislative Council at their ensuing session.

Draft Bill for appr.

I solicit His Highness's gracious sanction to the above proposals which have been agreed to by the Members of Council.

Para, 28, 29 & 30 of Rts.

Mirza M. Ismail

Bangalore,
13th May 1941.

D E W A N.

2633 1941

C 616.

General and Revenue
Secretariat.

SUBJECT:—

Bill to apply to Mysore the provisions of the Indian Soldiers (Litigation) Act, 1925.

Circulated to Members of Council for perusal of His Highness' orders before/~~after~~ issue of orders. (*Vide* Rules 31, 33 and 34 of the Subsidiary Rules for the conduct of business of Council in the Manual of Council Rules and Procedure.) (*)

Chief Secretary to Government.

Through the Secretary to Government,

General Department.

(on leave)

FIRST MEMBER OF COUNCIL.

11987/19.5.41

Nil 20/5/41

SECOND MEMBER OF COUNCIL.

11862/20.5.41

R.A 20.5.41

Gen. Secy. with Compliments

11/5 21.5.41

(*)

31. All urgent or confidential files returned with His Highness' orders may, in the absence of instructions or indications to the contrary, be ordinarily circulated to the Members of Council for perusal after the issue of orders.

33. The Secretaries concerned should see that orders in the cases referred to above are issued at once and that the files are returned immediately after to the Chief Secretary for circulation to the Members.

34. In all other cases, the files will first be circulated to the Members of Council at Headquarters and then sent to the Secretariat concerned for the issue of orders.

OFFICE OF THE SECRETARIAT

NOTE.—Contn. sheet

WD 02010—GPB—250—19-3-41

R.A seems to need no action.

20/5

Re. The Indian Soldiers (Litigation) Bill 1925

App F III-2

General and Revenue Secretariat R. A. & L. C.

File No. 2633 of 194.

Serial No.

3 JUN 1941 8321

Three copies taken & if approved the file will be returned to the Protection Branch.

30.5. (Protection Br)

Submitted for orders as to who will be in charge of the Bill in the R.A.

2/6/41 (Law Secy)

2.6.41

The Gen Secy may be in charge of the Bill.

(Gen Secy M.C.)

2/6/41.

3/6/41

As the bill relates to suits against men in Military units & to procedure in courts, I think it will be convenient, if the Law Secy is in charge, as he could explain better the questions of law & procedure involved. I should be thankful if he does so.

(Law Secy with compts)

3/6

Yes.

(Dewan)

3/6/41

4/6/41

4/6

3.6.41

P. C. to Law Secy.

6/6/41

NOTE—Contn. Sheet.

The Indian Soldiers (Litigation) Bill. 1368. P

File No. of 194

General and Revenue Secretariat R. A. & L. C.

Serial No.

under rule 36 of the Mysore Legislative Rules, the Dewan may order the publication of the Bill and it will not be necessary in such a case to move for leave to introduce. Submitted for order if the Bill may be published under this rule.

The Bill is a small one and applies Mysore Muntahi Muntandri the British Indian Act. We may therefore be not need, perhaps, to refer the Bill to a Select Committee. The following motions are accordingly suggested for inclusion in the list of business for the ensuing session of the Leg.

1. Motion that the Bill published under rule 36 of the Mysore Legislative Rules, be taken into Consideration by the Council at once.

Mover: Minister for Law.

Seconder: Law Secretary to Govt.

2. Motion that the Bill be passed.

Mover: Minister for Law

Seconder: Law Secretary to Govt.

Submitted for order.

8/6/41 Minister for Law + Dewan

8.6.41

Hm 8/6/41

DEWAN'S OFFICE 8 JUN 1941 No. 8431

8752/41

12636 8/6/41

9/6/41

Hm 9/6/41

1368

The Indian Soldiers Litigation Act as applied to Nepal.

General and Revenue Secretariat | File No. D.97. of 194 . | [App. F. III-2

Serial No.

The Statement of final principles was placed before the R.A. in June and appeared by that time.

The Bill was thereafter introduced and taken into Consideration by the Legislative Council on the 3rd instant and passed by that House at one sitting.

~~[illegible] as ordered by [illegible]~~

7.7.41 under Standing orders 44 and 45, a Copy of the Bill as passed has to be signed by the President and the copy submitted to His Highness the Maharaja.

If approved the file will be sent to the L.C. office for ~~put~~ kindly putting up a Copy of the Bill signed by the President

7-7-41 Yes
7.7.41

A Copy of the Bill signed by the President is placed in the file.

A D.F.N. is submitted

10.7

Law Secy)

D. F. N. submitted

Minister Law

Signed F.N. is kept below

12/7

Hon 11/7/41 11/7

OFFICE OF THE REPRESENTATIVE AND LEGISLATIVE COUNCIL
8 JULY 1941

OFFICE OF THE MINISTER FOR LAW
JUL 12 1941
No 408

Flag H

3/4/17

NOTE—Contn. Sheet.

FINAL NOTE BY THE MINISTER FOR LAW.

Subject.-

A.Bill to apply to Mysore the Provisions of the Indian Soldi (Litigation) Act, 1925.

D

The gracious sanction of His Highness was accorded on the 14 May 1941 to place the Bill to apply to Mysore the Provisions of the Indian Soldiers (Litigation) Act, 1925, before the Representative Assembly and to introduce the Bill itself in the Legislative Counci

E

The general principles of the Bill were placed before the Representative Assembly during its Budget Session last month and were approved by it. The Bill was taken into consideration by the Legislative Council during its recent session and passed by it at one sitting.

H

As required by Standing Order 45 of the Legislative Council Standing Orders, a copy of the Bill passed by the Council and signe by the President is submitted for the gracious perusal of His - - Highness.

I solicit the gracious sanction of His Highness to promulgat the Bill into law.

MINISTER FOR LAW.

Camp Mysore,
12th July 1941.

Submitted to His Highness.

I submit herewith a Final Note by the Minister for Law on the subject of the promulgation into law of the Bill to apply to Mysore the Provisions of the Indian Soldiers (Litigation) Act, 1925, for His Highness's gracious sanction.

N. Madhava Rau

Mysore,
12th July 1941.

D E W A N.

General and Revenue

Secretariat.

C 46/41.

SUBJECT:—

Promulgation into law of the Bill to apply to Mysore the Provisions of the Indian Soldiers (Litigation Act, 1925.

(*)

31. All urgent or confidential files returned with His Highness' orders may, in the absence of instructions or indications to the contrary, be ordinarily circulated to the Ministers for perusal after the issue of orders.

33. The Secretaries concerned should see that orders in the cases referred to above are issued at once and that the files are returned immediately after, to the Chief Secretary for circulation to the Ministers.

34. In all other cases, the files will first be circulated to the Ministers at Headquarters and then sent to the Secretariat concerned for the issue of orders.

Circulated to Council of Ministers for perusal of His Highness' orders before/after issue of orders. (*Vide* Rules 31, 33 and 34 of the Subsidiary Rules for the conduct of business of Council in the Manual of Council Rules and Procedure.) (*),

M Visvesvaraya

Chief Secretary to Government.

Through the Secretary to Government,

....Law.....Department. Hm 2 21/7/41.

430 21.7.41

Minister for Finance and Revenue. 21.7.44

649 21.7.41

Minister for Law. 21-7-44

770 22.7.41

Minister for Education. 23.7.41

424 23.7.41

Minister for Local Self-Govt. and Public Health. 23.7.41

Law Secy. with Compliments

NOTE.—Contn. sheet

WD 02878—GPB—300—26-6-41

115 24/7

Hm 2 25/7/41 JULY 25/7

Act to affs to regulate the provisions of the Indian Soldiers (Litigation)

General and Revenue Secretariat R. A. & L. C.	Legs File No. 4 of 1941. D 97	[App. F. III-2

Serial No.	
	The previous assent of this Highness was accorded on the 16th July 1941 to promulgate the Bill into law. A draft for directing publication of the Act as Act XV of 1941 is put up for approval.
	Secy 26/7 (A R C) Law Secy 28/7
	H.H. 29/7/41.
	Memo Gp. Rl 275 · Legs 5.41.1 dated 30.7.41 & Complete directing publ. of Act as Act XV of 1941

LEGY. LAW DEPT. 23 JULY 1941 GOVT OF MYSORE

Emily 45-40-1 Spl 702 20/8/40 620 CB

The reply to this communication should be addressed to the Secretary to the Resident in Mysore, Bangalore, by designation and not by name.

No. F 78.40/W.

FROM

THE SECRETARY
TO THE HON'BLE THE RESIDENT IN MYSORE.

To

The Chief Secretary to the Government of
His Highness the Maharaja of Mysore, Bangalore.

CHIEF SECRETARY'S OFFICE 19 AUG. 1940

Dated Bangalore, the 19th August *1940.*

PROTECTION TO MILITARY FORCES FROM LITIGATION DURING THE WAR.

SIR,

I am directed to request the Government of Mysore to consider what steps should be taken with a view to protect in the State the interests of soldiers whether belonging to the Indian State Forces or to the Indian Army or Indian Air Force who are unable on account of the war to look after their own affairs. It may be pointed out that not only soldiers on active service are unable to attend courts, but also, in many cases, those performing ordinary duties in India, since it is inconvenient at present to permit them to leave their units. It would be appreciated if the Government of Mysore would take steps as soon as possible to amend their Soldiers (Litigation) Act in order that it may confer the benefits accruing in respect of legal proceedings in British Indian Courts from the Indian Soldiers (Litigation) Act, 1925 or from that Act read with Section 18 of the Defence of India Act. It is considered that the expansion of the scope of the "war condition

an

and the inclusion of the "special conditions" are primarily necessary.

I have the honour to be,
Sir,
Your most obedient servant,

for SECRETARY TO THE RESIDENT.

VN

Appendix F G—1]

271

SUBJECT... .....

.....

.....

Section Mm

File No. 45-40

Serial No. 2

No. G. 1744/Gal.

To The C. C. M. & T.

Diary No. of letter replied to.. .....

702

General and Revenue Secretariat

( )

the 193 .

Date of issue 27/8/40

Signed by Mr. C.S.S.C

Sir, Protection to Military force from litigation during the war

I am directed to forward herewith, a copy of the Residency letter No. F 78-40/W dated the 19th August 1940 on the subject mentioned above and to request you ~~to~~ to furnish your opinion on the proposal suggested therein.

I have etc.,

Gaul Secy to Govt

23/8

List of enclosures.... ....

Copied by .....

Examined by.....

22/8/40

GOVERNMENT OF HIS HIGHNESS THE MAHARAJA OF MYSORE

General and Revenue Secretariat.

Dated, Bangalore, 27th August 1940

No. G1744/Sec/1

FROM

The Secretary to the Government of His Highness the Maharaja of Mysore.
General Department.

To

The Chief Commandant,
Mysore State Troops.

PROTECTION OF MILITARY FORCES FROM LITIGATION DURING THE WAR.

Sir,

I am directed to forward herewith, a copy of the Residency letter No.F.88-40/W. dated the 19th August 1940, on the above subject and to request you to furnish your openion on the proposal, suggested therein.

I have the honour to be

Sir,

Your most obedient servant

H/C C. N. Srinivasa Rao

for Secretary to Government,
General Department.

Tsn/3.

Mily 45 — 40-3. GM 1042

C. C. O. 1.]

MYSORE STATE TROOPS.

12-9-40

Telephone No. { 2442 (office) 2662 (table)

Telegr. Address : STATROOPS

No. 191-Pc-C364/40

OFFICE OF THE CHIEF COMMANDANT,

Bangalore, dated 6-9- *1940.*

FROM

COL. M. D. VIGORS, D.S.O., M.C.,
Chief Commandant,
Mysore State Troops, Bangalore.

GENERAL SECRETARY. 7 SEP 1940

To

The General Secretary
to the Government of H.H. the Maharaja of Mysore,
BANGALORE.

SIR,

Subject:- Protection of Military Forces from Litigation during the War.

With reference to your letter No.G.1744/Mily.45-40-2 dated 27-8-40 forwarding a copy of the Residency letter No.F.78-40/W dated the 19th August 1940 on the above subject, I have the honor to request that similar rules be made to protect the State soldiers of of Mysore State Troops from litigation during the war.

I have the honor to be,
Sir,
Your most obedient servant,

Col.
Chief Commandant,
Mysore State Troops.

The main file has been referred to the Law Secy for opinion on 28.8.40 with G.M. No. 702. If agreed, this will also be sent there for confirmation.

Yes. 16/9

14/9 14/9

Law Secy. Prote Br.

16/9 16/9

Recd back from the Prote Br on 3.10.40.

STATEMENT OF GENERAL PRINCIPLES.

In 1915, the Indian Soldiers (Litigation) Act, 1915 of British India was put into force in Mysore and its provisions made applicable to all the members of the Mysore Military Forces. This Act was intended to provide, inter alia, for the postponemnet in certain circumstances of civil or revenue proceedings in which an unrepresented member of the Mysore Military Forces serving under war conditions was a party.

In British India, the provisions of the 1915 Act were re-enacted with certain amendments, in 1918. It was later however suggested that the protection afforded to Indian Soldiers in these matters while serving under war conditions was also required while serving on garrison duty overseas and in certain areas in India. The opinion was also expressed that the Act should not apply to suits, appeals, applications to enforce rights of pre-emption nor to cases in which the interests of a soldier in the proceedings are either identical with or are adequately represented by another party to the proceedings. These various suggestions have been embodied in the Indian Soldiers (Litigation) Act, 1925, which is the law on the subject in Br. India.

It has been considered desirable to bring the law in force in Mysore in line with British India, and the present Bill is intended to enforce, mutatis mutandis, in Mysore, the provisions of the 1925 Act.

~~It may be mentioned that the protection has been~~

24.4.41

24.4.41

A BILL TO APPLY TO MYSORE THE PROVISIONS OF THE INDIAN SOLDIERS (LITIGATION) ACT,1925.

WHEREAS it is expedient to enforce in Mysore the provisions of the Indian Soldiers (Litigation) Act,1925 (IV of 1925);

It is hereby enacted as follows:-

1. The Indian Soldiers (Litigation) Act,1925 (IV of 1925) of the Government of India shall, mutatis mutandis be enforced in Mysore.

2. It shall apply to all the members of the Mysore Military Forces (as defined in the Code of Civil Procedure 1911), and also to Indian Soldiers (as defined in the Indian Soldiers (Litigation) Act,1925) when such members or soldiers are serving under the ~~special~~ conditions ~~as~~ specified ~~define~~ in section 3 of the said Soldiers (Litigation) Act,1925.

3. The Indian Soldiers (litigation) Act,1915 as enforce in Mysore (Act VI of 1915) is hereby repealed

The Indian Soldiers (Litigation) Act,1925.

(Here enter the British Indian Act.)

24.4.41

24.4.41

An Act to consolidate and amend the law to provide for the special protection in respect of civil and revenue litigation of Indian soldiers serving under special conditions.

WHEREAS it is expedient to consolidate and amend the law to provide for the special protection in respect of civil and revenue litigation of Indian soldiers serving under special conditions; it is hereby enacted as follows:-

Short title, extent and commencement.

1. (1) This Act may be called THE INDIAN SOLDIERS (LITIGATION) ACT, 1925.

(2) It extends to the whole of British India, including British Baluchistan and the Santhal Parganas.

(3) It shall come into force on the first day of April 1925.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context, —

(a) "Court" means a Civil or Revenue Court;

(b) "Indian Soldier" means any person subject to the Indian Army Act, 1911 (or the Indian Air-Force Act, 1932);

(c) "prescribed" means prescribed by rules made under this Act; and

(d) "proceeding" includes any suit, appeal or application.

3. For the purposes of this Act, an Indian soldier shall be deemed to be or, as the case may be, to have been serving -

Circumstances in which an Indian soldier shall be deemed to be serving under special conditions.

(a) under special conditions - when he is or has been serving under war conditions, or overseas, or at any place in Persia, Tibet, Afghanistan, Kashmir, Nepal or China, or with any unit the headquarters of which are situated at any place in Chitral, Waziristan, the North-West Frontier Province or British Baluchistan which is more than fifty miles distant by road from the nearest railway station;

(b) under war conditions - when he is or has been, at any time during the continuance of any hostilities declared by the (Central Government) by notification in the (Official Gazette) to constitute a state of war for the purposes of this Act or at any time during a period of six months thereafter, -

(i) serving out of India,

(ii) under orders to proceed on field service,

(iii) serving with any unit which is for the time being mobilised, or

(iv)serving under conditions which, in the opinion of the prescribed authority, preclude him from obtaining leave of abse to enable him to attend a Court as a party to any proceeding, o when he is or has been at any other time servin under conditio service under which has been declared by the Central Government by notification in the (Official Gazette) to be service under sp conditions; and

(c) (overseas - when he is or has been serving in any place outside India (other than Ceylon) the journey between which the and British India is ordinarily undertaken wholly or in part by s

Particulars to be furnished in plaints, applications or appeals to Court.

4. If any person presenting any plaint, application or appe to any Court has reason to believ that any adverse party is an Indi soldier who is serving under special conditions, he shall state th fact in his plaint, application or appeal.

Power of Collector to intervene in case of unrepresented Indian soldier.

5. If any Collector has reason to believe that any Indian soldier, who ordinarily resides or has property in his district and who is a party to any proceeding pending before any Court, is unable to appear therein, the Collector may certify the facts in the prescribed manner to the Court.

Notice to be given in case of unrepresented Indian soldier.

6. If a Collector has certified under section 5, or if the Court has reason to believe, that an Indian soldier, who is a party to an proceeding pending before it is unable to appear therein, and if the soldier is not represented by any person duly authorised to appear, plead or act on his behalf, the Court shall suspend the proceeding, and shall give notice thereof in the prescribed manner to the prescribed authority:

Provided that the Court may refrain from suspending the proceeding and issuing the notice if--

(a) the proceeding is a suit, appeal or application instituted or made by the soldier, alone or conjointly with others with object of enforcing a right of pre-emption, or

(b) the interests of the soldier in the proceeding are, in opinion of the Court, either identical with those of any other party to the proceeding and adequately represented by such other party or merely of a formal nature.

Postponement of proceedings.

7. If, on receipt of a notice under section 6, the prescribed authority certifies in the prescribed manner to the Court in which the proceeding is pending that the soldier in respect of whom the notice was given is serving under special conditions, and that a postponement of the proceeding in respect of the soldier is necessary in the interests of justice, the Court shall thereupon postpone the proceeding in respect of the soldier for the prescribed period, or, if no period has been prescribed, for such period as it thinks fit.

Court may proceed when no certificate received.

8. If, after issue of a notice under section 6, the prescribed authority either certifies that the soldier is not serving under special conditions or that such postponement is not necessary, or fails to certify, in the case of a soldier resident in the district in which the Court is situate, within two months or, in any other case, within three months from the date of the issue of the notice that such postponement is necessary, the Court may, if thinks fit, continue the proceeding.

Postponement of proceedings against Indian soldier on leave.

9. When any document purporting to be signed by the Commanding Officer of an Indian soldier who is a party to any proceeding is produced by or on behalf of the soldier before the Court in which the proceeding is pending and is to the effect that the soldier--

(a) is on leave of absence for a period not exceeding two months and is on the expiration of his leave to proceed on service under special conditions, or

(b) is on sick leave for a period not exceeding three months, and is on the expiration of his leave to rejoin his unit with a view to proceeding on service under special conditions,

the proceeding in respect of such soldier may, in any case such as is referred to in the proviso to section 6, and shall, in any other case, be postponed in the manner provided in section 7,

Power to set aside decrees and orders passed against an Indian soldier serving under war or special conditions.

10. (1) In any proceeding before a Court in which a decree or order has been passed against any Indian soldier whilst he was serving under war conditions or at any time after the 1st day of April, 1925, whilst he was serving under any special conditions, the soldier may apply to the Court which passed the decree or order for an order to set aside the same and, if the Court after giving an opportunity to the opposite party of being heard, is satisfied that the interests of justice require that the decree or order should be set aside as against the soldier, the Court shall, subject to such conditions, if any, as it thinks fit to impose, make an order accordingly.

(2) No such application shall be entertained unless it is made within two months from the expiry of the first period of thirty days after the date of the decree or order, or where the summons or notice was not duly served on the applicant, after the date on which the applicant had knowledge of the decree or order, during no part of which the soldier was serving under special conditions:

Provided that the provisions of section 5 of the Indian Limitation Act, 1908, shall apply to such applications.

(3) When the decree or order in respect of which an application under sub-section (1) is made is of such a nature that it cannot be set aside as against the soldier only, it may be set aside as against all or any of the parties against whom it has been made.

(4) Where a Court sets aside a decree or order under this section, it shall appoint a day for proceeding with the suit, appeal or application, as the case may be.

11. In computing the period of limitation prescribed by the Indian Limitation Act, or any other law for the time being in force for any appeal or application to any Court any party to which is or has been an Indian soldier, the time during which the soldier has been serving under war conditions since the 4th day of August, 1914 or under any special conditions since the 1st day of April, 19 shall be excluded:

Modification of law of limitation where Indian soldier serving under war or special conditions is a party.

Provided that this section shall not apply in the case of any suit, appeal or application instituted or made with the object of enforcing a right of pre-emption.

12. If any Court is in doubt whether, for the purposes of section 10 or section 11, any Indian soldier is or was at any particular time serving under war or other special conditions, it may refer the point for the decision of the prescribed authority, and the certificate of that authority shall be conclusive evidence on the point.

Power of Court to refer question as to whether service was under war or other special conditions.

13. The (Central Government,) after consulting the High Court (concerned), may, by notification in the (Official Gazette), make rules to provide for all or any of the following matters, namely:--

Rule-making power.

(a) the manner and form in which any notice or certificate under this Act shall be given;

(b) the period for which proceedings or any class of proceedings shall be postponed under section 7;

(c) the persons who shall be the prescribed authorities for the purposes of this Act;

(d) any other matter which is to be or may be prescribed; and

(e) generally any matters incidental to the purposes of this Act.

14.(As respects the Provincial Public Services, the Provinc

Power to apply the provision of the Act to other persons in the service of the Crown.

Government, and in other c. the Central Government) may notification in the (Official Gazette), direct that all or any of the provisions of this Act shall apply to any other class or persons in the service of His Majesty specified in such notific tion in the same manner as they apply to Indian soldiers.

15. (Repealed by Act XII of 1927)

Repeal of Acts IX of 1910 and XII of 1924.

A bill to apply to Mysore the provisions of the Indian Soldiers (Litigation) Act.

I beg to introduce the Indian Soldiers (Litigation) Bill and move that Sub-Order (2) of Standing Order 31 be suspended and that the Bill published under Rule 36 of the Mysore Legislative Rules be taken into consideration by the Council at once.

The statement of objects and reasons sets out in some detail the need and the object of the measure. ~~Mr Mazarey. The bill is~~

The Indian Soldiers (Litigation) Act was originally passed in 1915 as a war measure intended to safeguard the interests of the absentee soldier who was on active duty in the Field. But it was considered that similar protection was necessary at ordinary times when a soldier was on duty outside his place of residence and was consequently unable to take part in proceedings. The 1915 Act was replaced by the 1925 Act.

In Mysore, we have still in force the Indian 191[illegible] Act in force under the Mysore Act VI of 1915. The amend[illegible]ment of this Act has now become necessary as some of our troops have gone out for active service outside the State and as protection in respect of litigation in - - Mysore has to be given to Indian Soldiers also/who may have property or rights to property or other obligations in Mysore. This bill applies to the Indian 1925 Act to Mysore and repeals the 1915 Act. I may mention that under the Defence of India Act, the protection give the British Indian Act is available to members of Forces also when action in co-operation with Br[illegible] Indian Troops.

The measure is intended purely to postpone proceedings in certain circumstances and does not confer any substantive rights or privileges. The matter is urgent as a large number of soldiers are out on active service & their civil rights have to be protected

The bill was placed before the Representative Assembly at its recent Session and met the approval of that Assembly. I have no doubt it will meet with your support also.

3. A Bill to apply to Mysore the Provisions of the Indian Soldiers (Litigation) Act, 1925.

Whereas it is expedient to enforce in Mysore the provisions of the Indian Soldiers (Litigation) Act, 1925, (IV of 1925) ;

It is hereby enacted as follows :—

1. The Indian Soldiers (Litigation) Act, 1925 (IV of 1925), of the Government of India shall, *mutatis mutandis*, be enforced in Mysore.

2. It shall apply to all the members of the Mysore Military Forces (as defined in the Code of Civil Procedure, 1911) and also to Indian soldiers [as defined in the Indian Soldiers (Litigation) Act, 1925] when such members or soldiers are serving under the conditions specified in section 3 of the said Soldiers (Litigation) Act, 1925.

3. The Indian Soldiers (Litigation) Act, 1915, as enforced in Mysore (Act VI of 1915) is hereby repealed.

THE INDIAN SOLDIERS (LITIGATION) ACT, 1925.

An Act to consolidate and amend the law to provide for the special protection in respect of civil and revenue litigation of Indian soldiers serving under special conditions.

WHEREAS it is expedient to consolidate and amend the law to provide for the special protection in respect of civil and revenue litigation of Indian soldiers serving under special conditions;

It is hereby enacted as follows :—

Short extent commencement.

1. (1) This Act may be called THE INDIAN SOLDIERS (LITIGATION) ACT, 1925.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(3) It shall come into force on the first day of April 1925.

Definitions

2. In this Act, unless there is anything repugnant in the subject or context :—

(*a*) " Court " means a Civil or Revenue Court ;

(*b*) "Indian Soldier" *means any person subject to the Indian Army Act, 1911 (or the Indian Air Force Act, 1932);

(*c*) "prescribed" means prescribed by rules made under this Act; and

(*d*) "proceeding" includes any suit, appeal or application.

Circumstance in which an Indian soldier shall be deemed to be serving under special conditions.

3. For the purposes of this Act, an Indian soldier shall be deemed to be or, as the case may be, to have been serving—

(*a*) under special conditions—when he is or has been serving under war conditions, or overseas, or at any place in Persia, Tibet, Afghanistan, Kashmir, Nepal or China, or with any unit the headquarters of which are situated at any place in Chitral, Waziristan, the North-West Frontier Province or British Baluchistan, which is more than fifty miles distant by road from the nearest railway station;

(*b*) under war conditions—when he is or has been, at any time during the continuance of any hostilities declared by the (Central Government) by notification in the (Official Gazette) to constitute a state of war for the purposes of this Act or at any time during a period of six months thereafter:—

(i) serving out of India,

(ii) under orders to proceed on field service,

(iii) serving with any unit which is for the time being mobilised, or

(iv) serving under conditions which, in the opinion of the prescribed authority, preclude him from obtaining leave of absence to enable him to attend a Court as a party to any proceeding, or when he is or has been at any other time serving under conditions service under which has been declared by the (Central Government) by notification in the (Official Gazette) to be service under war conditions; and

(c) † (overseas—when he is or has been serving in any place outside India (other than Ceylon), the journey between which and British India is ordinarily undertaken wholly or in part by sea).

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* Added by Act XIV of 1932, Schedule.

† New clause (c) was substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

Particulars to be furnished in plaints, applications or appeals to Court.

4. If any person presenting any plaint, application or appeal to any Court has reason to believe that any adverse party is an Indian soldier who is serving under special conditions, he shall state the fact in his plaint, application or appeal.

Power of Collector to intervene in case of unrepresented Indian soldier.

5. If any Collector has reason to believe that any Indian soldier, who ordinarily resides or has property in his district and who is a party to any proceeding pending before any Court, is unable to appear therein, the Collector may certify the facts in the prescribed manner to the Court.

Notice to be given in case of unrepresented Indian soldier.

6. If a Collector has certified under section 5, or if the Court has reason to believe, that an Indian soldier, who is a party to any proceeding pending before it is unable to appear therein, and if the soldier is not represented by any person duly authorised to appear, plead or act on his behalf, the Court shall suspend the proceeding, and shall give notice thereof in the prescribed manner to the prescribed authority:

Provided that the Court may refrain from suspending the proceeding and issuing the notice if—

(*a*) the proceeding is a suit, appeal or application instituted or made by the soldier, alone or conjointly with others with the object of enforcing a right of pre-emption, or

(*b*) the interests of the soldier in the proceeding are, in the opinion of the Court, either identical with those of any other party to the proceeding and adequately represented by such other party or merely of a formal nature.

Postponement of proceedings.

7. If, on receipt of a notice under section 6, the prescribed authority certifies in the prescribed manner to the Court in which the proceeding is pending that the soldier in respect of whom the notice was given is serving under special conditions, and that a postponement of the proceeding in respect of the soldier is necessary in the interests of justice, the Court shall thereupon postpone the proceeding in respect of the soldier for the prescribed period, or, if no period has been prescribed, for such period as it thinks fit.

Court may proceed when no certificate received.

8. If, after issue of a notice under section 6, the prescribed authority either certifies that the soldier is not serving under special conditions or that such postponement is not necessary, or fails to certify, in the case

of a soldier resident in the district in which the Court is situate, within two months or, in any other case, within three months from the date of the issue of the notice that such postponement is necessary, the Court may, if it thinks fit, continue the proceeding.

Postponement of proceedings against Indian soldier on leave.

9. When any document purporting to be signed by the Commanding Officer of an Indian soldier who is a party to any proceeding is produced by or on behalf of the soldier before the Court in which the proceeding is pending and is to the effect that the soldier—

(*a*) is on leave of absence for a period not exceeding two months, and is on the expiration of his leave to proceed on service under special conditions, or

(*b*) is on sick leave for a period not exceeding three months, and is on the expiration of his leave to rejoin his unit with a view to proceeding on service under special conditions,

the proceeding in respect of such soldier may, in any case such as is referred to in the proviso to section 6, and shall, in any other case, be postponed in the manner provided in section 7.

Power to set aside decrees and orders passed against an Indian soldier serving under war or special conditions.

10. (1) In any proceeding before a Court in which a decree or order has been passed against any Indian soldier whilst he was serving under war conditions or at any time after the 1st day of April, 1925, whilst he was serving under any special conditions, the soldier may apply to the Court which passed the decree or order for an order to set aside the same, and, if the Court after giving an opportunity to the opposite party of being heard, is satisfied that the interests of justice require that the decree or order should be set aside as against the soldier, the Court shall, subject to such conditions, if any, as it thinks fit to impose, make an order accordingly.

(2) No such application shall be entertained unless it is made within two months from the expiry of the first period of thirty days after the date of the decree or order, or where the summons or notice was not duly served on the applicant, after the date on which the applicant had knowledge of the decree or order, during no part of which the soldier was serving under special conditions:

Provided that the provisions of section 5 of the Indian Limitation Act, 1908, shall apply to such applications.

(3) When the decree or order in respect of which an application under sub-section (1) is made is of such a nature that it cannot be set aside as against the soldier only, it may be set aside as against all or any of the parties against whom it has been made.

(4) Where a Court sets aside a decree or order under this section, it shall appoint a day for proceeding with the suit, appeal or application, as the case may be.

Modification of law of limitation where Indian soldier serving under war or special conditions is a party.

11. In computing the period of limitation prescribed by the Indian Limitation Act, 1908, or any other law for the time being in force for any suit, appeal or application to any Court any party to which is or has been an Indian soldier, the time during which the soldier has been serving under war conditions since the 4th day of August, 1914, or under any special conditions since the 1st day of April, 1925, shall be excluded:

Provided that this section shall not apply in the case of any suit, appeal or application instituted or made with the object of enforcing a right of pre-emption.

Power of Court to refer question as to whether service was under war or other special conditions.

12. If any Court is in doubt whether, for the purposes of section 10 or section 11, any Indian soldier is or was at any particular time serving under war or other special conditions, it may refer the point for the decision of the prescribed authority, and the certificate of that authority shall be conclusive evidence on the point.

Rule-making power.

13. The [(Central Government,)[1] after consulting the High Court (concerned),[2]] may, by notification in the (Official Gazette), make rules to provide for all or any of the following matters, namely:—

(*a*) the manner and form in which any notice or certificate under this Act shall be given;

(*b*) the period for which proceedings or any class of proceedings shall be postponed under section 7;

(*c*) the persons who shall be the prescribed authorities for the purposes of this Act;

(*d*) any other matter which is to be or may be prescribed; and

(*e*) generally any matters incidental to the purposes of this Act.

Power to apply the provision of the Act to other persons in the service of the Crown.

14. (As respects the Provincial Public Services, the Provincial Government, and in other cases, the Central

1. Substituted for 'Local Government' by Government of India (Adaptation of Indian Laws) Order, 1937.

2. Inserted by *ibid*.

Government)[1] may, by notification in the (Official Gazette), direct that all or any of the provisions of this Act shall apply to any other class of persons in the service of His Majesty specified in such notification in the same manner as they apply to Indian soldiers.

Repeal of Acts IX of 1918 and XII of 1924.

15. (Repealed by Act XII of 1927.)

Statement of Objects and Reasons of a Bill to apply to Mysore the Provisions of the Indian Soldiers (Litigation) Act, 1925.

In 1915, the Indian Soldiers (Litigation) Act, 1915, of British India was put into force in Mysore and its provisions made applicable to all the members of the Mysore Military Forces. This Act was intended to provide, *inter alia*, for the postponement, in certain circumstances, of civil or revenue proceedings to which an unrepresented member of the Mysore Military Forces serving under war conditions was a party.

In British India, the provisions of the 1915 Act were re-enacted with certain amendments, in 1918. It was later suggested that the protection afforded to Indian soldiers in these matters while serving under war conditions, was also required while serving on garrison duty overseas and in certain areas in India. The opinion was also expressed that the Act should not apply to suits, appeals or applications to enforce rights of pre-emption nor to cases in which the interests of a soldier in the proceedings are either identical with or are adequately represented by another party to the proceedings. These various suggestions have been embodied in the Indian Soldiers (Litigation) Act, 1925, which is the law on the subject in British India.

It has been considered desirable to bring the law in Mysore in line with that in British India and the present Bill is intended to enforce *mutatis mutandis* in Mysore the provisions of the 1925 Act.

1. Substituted for 'Governor-General in Council' by *ibid.*

By Order,

H. V. NARAYANA RAO,

Secretary to Government,
Law Department.

Printed by the Superintendent at the Government Press, Bangalore.

Passed by the Legislative Council,
D. H. Chandrasekharaiya
7/7 President, Legislative Council

REGULATION No. VI OF 1915.

(Received the assent of His Highness the Maharaja on the 20th day of October 1915.)

The Indian Soldiers Litigation Regulation.

Whereas it is expedient to enforce in Mysore the provisions of the Indian Soldiers (Litigation) Act, 1915; His Highness the Maharaja is pleased to enact as follows:—

1. The Indian Soldiers (Litigation) Act, XII of 1915, shall, *mutatis mutandis* be enforced in Mysore.

2. It shall also apply to all the members of the Mysore Military Forces (as defined in the Code of Civil Procedure, 1911) on active service in the same way, and to the same extent, as in the case of an Indian Soldier.

3. The Indian Soldiers Litigation (Emergency) Regulation, V of 1915, is hereby repealed.

Act No. XII of 1915.

An Act to provide for the special protection in respect of civil and revenue litigation of Indian soldiers serving under war conditions.

WHEREAS it is expedient to provide for the special protection in respect of civil and revenue litigation of Indian soldiers serving under war conditions; It is hereby enacted as follows:—

1. (*1*) This Act may be called the Indian Soldiers (Litigation) Act 1915. Short title and extent.

(*2*) It extends to the whole of British India, including British Beluchistan.

2. In this Act— Definitions.

"Indian soldier" means any person subject to the Indian Army Act, 1911;

"prescribed" means prescribed by rules made under this Act;

"proceeding" includes suit and appeal; and

"serving under war conditions" means—

(*1*) during the continuance of the present war and for six months thereafter, serving out of India or serving in India when such service has been declared, by notification of the Governor-General in Council in the Gazette of India, to be service under war conditions; and

(*2*) after the expiration of that period, serving in any place when such service has been declared, by notification of the Governor-General in Council in the Gazette of India, to be service under war conditions.

Particulars to be furnished in plaints, applications or appeals to Civil or Revenue Court.

3. If any person presenting any plaint, application or appeal to any Civil or Revenue Court has reason to believe that any adverse party is an Indian soldier who is serving under war conditions, he shall state the fact in his plaint, application or appeal.

Notice to be given in case of unrepresented Indian soldier.

4. If any Civil or Revenue Court has reason to believe that any party to any proceeding pending before such Court is an Indian soldier who is serving under war conditions, and that such soldier is not represented in the proceeding by any person duly authorised to appear, plead, or act on his behalf, such Court shall give notice thereof in the prescribed manner to the prescribed authority.

Postponement of proceedings

5. On receipt of a notice under section 4, the prescribed authority may, if it is of opinion that a postponement of the proceeding as against such soldier is necessary in the interests of justice, certify the fact in the prescribed manner to the Court in which the proceeding is pending, and thereupon such Court shall postpone the proceeding as against such soldier for the prescribed period, or, if no period has been prescribed, for such period as it thinks fit.

Court may proceed when no certificate received within certain period.

6. If, after the issue of a notice under section 4, the prescribed authority either certifies that such postponement is not necessary or fails to certify, in the case of a soldier resident in the district in which the Court is situate, within two months, or in any other case, within three months from the date of the issue of the notice under section 4, that such postponement is necessary, the Court may, if it thinks fit, continue the proceeding.

Power of Collector to intervene *suo motu*.

7. If the Collector has reason to believe that and Indian soldier who ordinarily resides, or who has property,

in his district and is serving under war conditions, is a party to any proceeding pending before any Civil or Revenue Court, and that such soldier is not represented in such proceeding by any person duly authorized to appear, plead, and act in his behalf, the Collector may, if he is of opinion that a postponement of the proceeding as against such soldier is necessary in the interests of justice, certify the fact in the prescribed manner to such Court, and if the Court is satisfied that such Indian soldier is not so represented, the Court shall postpone the proceeding as against such soldier in the manner provided in section 5.

Power to set aside decrees and orders passed against an Indian soldier serving under war conditions.

8. (*1*) In any proceeding before a Civil or Revenue Court in which a decree or order has been passed against any Indian soldier whilst such soldier was serving under war conditions, such soldier may apply to the Court which passed the same for an order to set it aside; and if he satisfies the Court that default after the 5th of May, 1915, has been made in complying with the provisions of section 3 or 4, the Court shall, or, in any other case if the interests of justice require such a course, the Court, subject to such conditions (if any) as it thinks fit to impose, may make an order setting aside the decree or order as against such soldier:

Provided, firstly, that any such application is made within three months from the date on which such soldier ceased to serve under war conditions; secondly, that no decree or order shall be set aside on any such application unless notice thereof has been served on the opposite party; and thirdly, that when the decree or order is of such a nature that it cannot be set aside as against such soldier only, it may be set aside as against all or any of the parties against whom it has been made.

(*2*) The provisions of section 5 of the Indian Limitation Act, 1908, shall apply to applications under this section.

(*3*) Where an order is made in the exercise of the power conferred by sub-section (*1*). the Court shall continue the proceeding.

Power of Civil or Revenue Court to refer question of whether service was under war conditions or not.

9. If any Civil or Revenue Court is in doubt whether any Indian soldier is or was at any particular time serving under war conditions, such Court may refer the point for the decision of the prescribed authority, and the certificate of such authority shall be conclusive evidence on the point.

Rule-making power.

10. The Local Government, after consulting the

High Court, may, by notification in the local official gazette, make rules—

(*a*) prescribing the manner and form in which any notice or certificate under this Act, shall be given and the authorities to whom such notices shall be given, and by whom the powers under this Act shall be exercised;

(*b*) the period for which proceedings or any class of proceeding shall be suspended under this Act, and

(*c*) generally providing for any matters incidental to the purposes of this Act.

Modification of law of limitation in the case of Indian soldiers serving under war conditons.

11. In computing the period of limitation prescribed by the Indian Limitation Act, 1908, or any other law for the time being in force for any suit, appeal or application to any Civil or Revenue Court in which the plaintiff, appellant or applicant is an Indian soldier, the time during which such soldier has been serving under war conditions, since the 4th of August 1914, shall be excluded.

Power to apply the provisions of this Act to other persons in the service of the Crown.

12. The Governor-General in Council may, by notification in the *Gazette of India*, direct that all or any of the provisions of this Act shall apply to any other class of persons in the service of His Majesty specified in such notification in the same manner as they apply to Indian soldiers, and upon such notification such provisions shall apply accordingly.

Repeal of Ordinance No. II of 1915

13. The Indian Soldiers (Litigation) Ordinance, 1915, is hereby repealed.

Price Six Pies

G. R. S. VI.—s-III/14]

DRAFT.

SUBJECT.....

.....

.....

Section. Legis
File No. 5 – 41
Serial No. 1

Proceedings of the Government of H. H. the Maharaja of Mysore.

Diary No. of letter replied to.....

GENERAL AND REVENUE SECRETARIAT,

( )

, *the*.....191 .

Order No. RL 2757/Encl

Ordered that the accompanying Act to apply to Mysore the provisions of the Indian Soldiers' (Litigation) Act, 1925

which received the assent of His Highness the Maharaja, on the 16th day of July 1941, be published as ~~Regulation~~ Act No. XV of 1941, in the *Mysore Gazette* for general information.

Date of issue 30.7.41

Signed by Mr. H. V. Narayana Rao

H. V. Narayana Rao.
Secretary to Government.
Law Dept

May this be—

(i) Printed?

(ii) Treated as a standing order?

(iii) Published in the "Gazette" English part?

(iv) Translated?

(v) Placed at the disposal of the Press?

(vi) Published in the "Gazette" Kannada part?

30/7/41

To

The Compiler, *Mysore Gazette*, for publication in Part IV of the Gazette, in English and Kannada and for supply of .....spare copies in English, and .....spare copies in Kannada to this office, and.....spare copies in English and.....spare copies in Kannada to the Curator, Government Central Book Depot, Bangalore. Proofs should be sent to this office for approval before publication.

Spare copies as per Standing Order ; 1

Copy to Translation Section.

PROCEEDINGS OF THE GOVERNMENT OF HIS HIGHNESS
THE MAHARAJA OF MYSORE

ORDER No. RL 275 Leg's 5-41-1
and ae

Dated, Bangalore, the 30th July 1941.

Order that the accompanying Act to apply to Mysore the provisions of the Indian Soldiers (Litigation)Act, 1925, which received the assent of His Highness the Maharaja, on 16th day of July 1941, be published as Act No.XV of 1941, in the Mysore Gazette for general information.

30/7/41

Secretary to Government,
Law Department.

To--The Compiler, Mysore Gazette, for publication in Part IV of the Gazette, in English and Kannada and for supply of spare copies as per standing orders.

Copy to Translation Section.

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TN-3)

Act no XV of 1941

A Act

~~3. A Bill~~ to apply to Mysore the Provisions of the Indian Soldiers (Litigation) Act, 1925.

Received assent 7 Ashadha Shukla Maharaja 1863 Saka 7 July 1941

Whereas it is expedient to enforce in Mysore the provisions of the Indian Soldiers (Litigation) Act, 1925, (IV of 1925);

It is hereby enacted as follows:—

1. The Indian Soldiers (Litigation) Act, 1925 (IV 1925), of the Government of India shall, *mutatis mutandis*, be enforced in Mysore.

2. It shall apply to all the members of the Mysore Military Forces (as defined in the Code of Civil Procedure, 1911) and also to Indian soldiers [as defined in the Indian Soldiers (Litigation) Act, 1925] when such members or soldiers are serving under the conditions specified in section 3 of the said Soldiers (Litigation) Act, 1925.

3. The Indian Soldiers (Litigation) Act, 1915, as enforced in Mysore (Act VI of 1915) is hereby repealed.

(Sd) N. Madhava Rau
Dewan

THE INDIAN SOLDIERS (LITIGATION) ACT, 1925.

An Act to consolidate and amend the law to provide for the special protection in respect of civil and revenue litigation of Indian soldiers serving under special conditions.

WHEREAS it is expedient to consolidate and amend the law to provide for the special protection in respect of civil and revenue litigation of Indian soldiers serving under special conditions;

It is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may be called THE INDIAN SOLDIERS (LITIGATION) ACT, 1925.

(2) It extends to the whole of British India, including British Baluchistan and the Sonthal Parganas.

(3) It shall come into force on the first day of April 1925.

Definitions

2. In this Act, unless there is anything repugnant in the subject or context:—

(*a*) "Court" means a Civil or Revenue Court;

(*b*) "Indian Soldier" *means any person subject to the Indian Army Act, 1911 (or the Indian Air Force Act, 1932);

(*c*) "prescribed" means prescribed by rules made under this Act; and

(*d*) "proceeding" includes any suit, appeal or application.

Circumstance in which an Indian soldier shall be deemed to be serving under special conditions.

3. For the purposes of this Act, an Indian soldier shall be deemed to be or, as the case may be, to have been serving—

(*a*) under special conditions—when he is or has been serving under war conditions, or overseas, or at any place in Persia, Tibet, Afghanistan, Kashmir, Nepal or China, or with any unit the headquarters of which are situated at any place in Chitral, Waziristan, the North-West Frontier Province or British Baluchistan, which is more than fifty miles distant by road from the nearest railway station;

(*b*) under war conditions—when he is or has been, at any time during the continuance of any hostilities declared by the (Central Government) by notification in the (Official Gazette) to constitute a state of war for the purposes of this Act or at any time during a period of six months thereafter:—

(i) serving out of India,

(ii) under orders to proceed on field service,

(iii) serving with any unit which is for the time being mobilised, or

(iv) serving under conditions which, in the opinion of the prescribed authority, preclude him from obtaining leave of absence to enable him to attend a Court as a party to any proceeding, or when he is or has been at any other time serving under conditions service under which has been declared by the (Central Government) by notification in the (Official Gazette) to be service under war conditions; and

(c) † (overseas—when he is or has been serving in any place outside India (other than Ceylon), the journey between which and British India is ordinarily undertaken wholly or in part by sea).

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* Added by Act XIV of 1932, Schedule.

† New clause (c) was substituted by Government of India (Adaptation of Indian Laws) Order, 1937.

4. If any person presenting any plaint, application or appeal to any Court has reason to believe that any adverse party is an Indian soldier who is serving under special conditions, he shall state the fact in his plaint, application or appeal. Particulars to be furnished in plaints, applications or appeals to Court.

5. If any Collector has reason to believe that any Indian soldier, who ordinarily resides or has property in his district and who is a party to any proceeding pending before any Court, is unable to appear therein, the Collector may certify the facts in the prescribed manner to the Court. Power of Collector to intervene in case of unrepresented Indian soldier.

6. If a Collector has certified under section 5, or if the Court has reason to believe, that an Indian soldier, who is a party to any proceeding pending before it is unable to appear therein, and if the soldier is not represented by any person duly authorised to appear, plead or act on his behalf, the Court shall suspend the proceeding, and shall give notice thereof in the prescribed manner to the prescribed authority: Notice to be given in case of unrepresented Indian soldier.

Provided that the Court may refrain from suspending the proceeding and issuing the notice if—

(*a*) the proceeding is a suit, appeal or application instituted or made by the soldier, alone or conjointly with others with the object of enforcing a right of pre-emption, or

(*b*) the interests of the soldier in the proceeding are, in the opinion of the Court, either identical with those of any other party to the proceeding and adequately represented by such other party or merely of a formal nature.

7. If, on receipt of a notice under section 6, the prescribed authority certifies in the prescribed manner to the Court in which the proceeding is pending that the soldier in respect of whom the notice was given is serving under special conditions, and that a postponement of the proceeding in respect of the soldier is necessary in the interests of justice, the Court shall thereupon postpone the proceeding in respect of the soldier for the prescribed period, or, if no period has been prescribed, for such period as it thinks fit. Postponement of proceedings.

8. If, after issue of a notice under section 6, the prescribed authority either certifies that the soldier is not serving under special conditions or that such postponement is not necessary, or fails to certify, in the case Court may proceed when no certificate received.

of a soldier resident in the district in which the Court is situate, within two months or, in any other case, within three months from the date of the issue of the notice that such postponement is necessary, the Court may, if it thinks fit, continue the proceeding.

Postponement of proceedings against Indian soldier on leave.

9. When any document purporting to be signed by the Commanding Officer of an Indian soldier who is a party to any proceeding is produced by or on behalf of the soldier before the Court in which the proceeding is pending and is to the effect that the soldier—

(*a*) is on leave of absence for a period not exceeding two months, and is on the expiration of his leave to proceed on service under special conditions, or

(*b*) is on sick leave for a period not exceeding three months, and is on the expiration of his leave to rejoin his unit with a view to proceeding on service under special conditions, the proceeding in respect of such soldier may, in any case such as is referred to in the proviso to section 6, and shall, in any other case, be postponed in the manner provided in section 7.

Power to set aside decrees and orders passed against an Indian soldier serving under war or special conditions

10. (1) In any proceeding before a Court in which a decree or order has been passed against any Indian soldier whilst he was serving under war conditions or at any time after the 1st day of April, 1925, whilst he was serving under any special conditions, the soldier may apply to the Court which passed the decree or order for an order to set aside the same, and, if the Court after giving an opportunity to the opposite party of being heard, is satisfied that the interests of justice require that the decree or order should be set aside as against the soldier, the Court shall, subject to such conditions, if any, as it thinks fit to impose, make an order accordingly.

(2) No such application shall be entertained unless it is made within two months from the expiry of the first period of thirty days after the date of the decree or order, or where the summons or notice was not duly served on the applicant, after the date on which the applicant had knowledge of the decree or order, during no part of which the soldier was serving under special conditions:

Provided that the provisions of section 5 of the Indian Limitation Act, 1908, shall apply to such applications.

(3) When the decree or order in respect of which an application under sub-section (1) is made is of such a nature that it cannot be set aside as against the soldier only, it may be set aside as against all or any of the parties against whom it has been made.

(4) Where a Court sets aside a decree or order under this section, it shall appoint a day for proceeding with the suit, appeal or application, as the case may be.

Modification of law of limitation where Indian soldier serving under war or special conditions is a party.

11. In computing the period of limitation prescribed by the Indian Limitation Act, 1908, or any other law for the time being in force for any suit, appeal or application to any Court any party to which is or has been an Indian soldier, the time during which the soldier has been serving under war conditions since the 4th day of August, 1914, or under any special conditions since the 1st day of April, 1925, shall be excluded:

Provided that this section shall not apply in the case of any suit, appeal or application instituted or made with the object of enforcing a right of pre-emption.

Power of Court to refer question as to whether service was under war or other special conditions.

12. If any Court is in doubt whether, for the purposes of section 10 or section 11, any Indian soldier is or was at any particular time serving under war or other special conditions, it may refer the point for the decision of the prescribed authority, and the certificate of that authority shall be conclusive evidence on the point.

Rule-making power.

13. The [(Central Government,)[1] after consulting the High Court (concerned),[2]] may, by notification in the (Official Gazette), make rules to provide for all or any of the following matters, namely:—

(*a*) the manner and form in which any notice or certificate under this Act shall be given;

(*b*) the period for which proceedings or any class of proceedings shall be postponed under section 7;

(*c*) the persons who shall be the prescribed authorities for the purposes of this Act;

(*d*) any other matter which is to be or may be prescribed; and

(*e*) generally any matters incidental to the purposes of this Act.

Power to apply the provision of the Act to other persons in the service of the Crown.

14. (As respects the Provincial Public Services, the Provincial Government, and in other cases, the Central

1. Substituted for 'Local Government' by Government of India (Adaptation of Indian Laws) Order, 1937.

2. Inserted by *ibid*.

Government)[1] may, by notification in the (Official Gazette), direct that all or any of the provisions of this Act shall apply to any other class of persons in the service of His Majesty specified in such notification in the same manner as they apply to Indian soldiers.

Repeal of Acts IX of 1918 and XII of 1924.

15. (Repealed by Act XII of 1927.)

Statement of Objects and Reasons of a Bill to apply to Mysore the Provisions of the Indian Soldiers (Litigation) Act, 1925.

In 1915, the Indian Soldiers (Litigation) Act, 1915, of British India was put into force in Mysore and its provisions made applicable to all the members of the Mysore Military Forces. This Act was intended to provide, *inter alia*, for the postponement, in certain circumstances, of civil or revenue proceedings to which an unrepresented member of the Mysore Military Forces serving under war conditions was a party.

In British India, the provisions of the 1915 Act were re-enacted with certain amendments, in 1918. It was later suggested that the protection afforded to Indian soldiers in these matters while serving under war conditions, was also required while serving on garrison duty overseas and in certain areas in India. The opinion was also expressed that the Act should not apply to suits, appeals or applications to enforce rights of pre-emption nor to cases in which the interests of a soldier in the proceedings are either identical with or are adequately represented by another party to the proceedings. These various suggestions have been embodied in the Indian Soldiers (Litigation) Act, 1925, which is the law on the subject in British India.

It has been considered desirable to bring the law in Mysore in line with that in British India and the present Bill is intended to enforce *mutatis mutandis* in Mysore the provisions of the 1925 Act.

1. Substituted for 'Governor-General in Council' by *ibid.*

By Order,

H. V. NARAYANA RAO,

Secretary to Government,
Law Departmen..

Printed by the Superintendent at the Government Press, Bangalore.